

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
04/18/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0301-R-2022
Nordlund, Julia
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
BIG DRY CREEK - BASIN (40D)
PRELIMINARY DECREE

CLAIMANT: Thomas L. Wankel

CASE 40D-0301-R-2022
40D 164511-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 40D 164511-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The claim did not receive objections, counterobjections, or notices of intent to appear. To address the issue remarks, the Water Court consolidated the claim into case 40D-0301-R-2022.

FINDINGS OF FACT

1. Claim 40D 164511-00 received the following issue remark:
THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION AND RESERVOIR RECORD. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NENWNE OF SECTION 30, T16N, R43E, GARFIELD COUNTY.
2. Claimant was given a deadline of March 13, 2023. If nothing was filed, the Court stated it would change the abstract to match what the remark recommended.
3. No response was filed.
4. The new place of use for claim 40D 164511-00 is NENWNE Sec. 30, Twp 16N, Rge. 43E.
5. Claim 40D 164511-00 also had an issue remark regarding the modification it made to the point of diversion and reservoir record. It stated if no objections are filed to this claim e the elements will remain as is and the remark will be removed.
6. No Objections were filed, the remark served its purpose and can be removed.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.
2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

3. The Water Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
4. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33.
5. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.
6. Sanctions for a claimant’s failure to comply with an order issued by the Court in its review of issue remarks include: 1) amending elements of the claim to conform with information in the claim file, 2) amending element of the claim to conform with information obtained by the court, or 3) removing the issue remark. Section 85-2-248(9), MCA; Rule 22, W.R.Adj.R.
7. Claimant Thomas Wankel failed to respond to the Water Court’s Order Setting Filing Deadline. Therefore, it is proper for the Water Court to resolve the issue remarks and amend the claim element to conform with DNRC issue remarks.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes specified above should be adopted. A Post-decree abstract of the claim accompany this Order to confirm the changes have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Thomas L. Wankel
PO Box 175
Angela, MT 59312

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG DRY CREEK
BASIN 40D**

Water Right Number: 40D 164511-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: THOMAS L WANKEL
PO BOX 175
ANGELA, MT 59312

Priority Date: JUNE 30, 1968

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF ANTELOPE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	30	16N	43E	GARFIELD

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWNE	30	16N	43E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Period of Use: JUNE 1 TO DECEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENWNE	30	16N	43E	GARFIELD